# Supreme Court of the United States.

No. 411.—October Term, 1904.

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| The Hamburg American Steamship Company, Plaintiff in Error, *vs.* Minnie Grube, as Administratrix of John Grube, deceased. | In error to the Supreme Court of the State of New York. |

[February 20, 1905.]

This action was brought in the Supreme Court of New York by Minnie Grube, as administratrix of John Grube, against the Hamburg American Steamship Company, to recover damages for his death, under the statute of New Jersey in that behalf, occasioned by the sinking of the James Gordon Bennett, a vessel owned by a New Jersey corporation, by the steamship Alene, belonging to the steamship company. There was a conflict of evidence as to the place of the collision, evidence being given on the one hand that it occurred in waters beyond the three-mile limit of the coast of the State of New Jersey, and, on the other, that it occurred within the three-mile limit along that coast.

The record discloses no instructions to the jury requested by defendant below, and no exceptions were taken by it to the charge of the court, which was not included in the bill of exceptions or case made.

Defendant moved the court to direct a verdict in its favor upon the following grounds:

"Defendant claims the right, under the statute of the United States confirming and approving the agreement as to boundaries between the State of New York and the State of New Jersey, to be free in navigating the main sea to the eastward of Sandy Hook peninsula, from the operation of any law of the State of New Jersey giving a right of action for injuries causing death, and claims that under the statutes aforesaid, the jurisdiction of that State extends only to the main sea; that is to say, low water mark along its exterior coast line and to a line drawn from headland to headland across the entrance to the bay of New York. It, therefore, asks the court to direct the jury to return a verdict for the defendant, on the ground that it appears by uncontradicted evidence that the collision between the SS. Alene and the schooner James Gordon Bennett, to recover damages for which this suit is brought, occurred upon the main sea and to the eastward of the Sandy Hook peninsula, and at a distance of more than a mile to the eastward of low water mark upon the exterior line thereof.

"Defendant claims the right, by reason of the purchase by the United States of the Sandy Hook peninsula, and the cession to the United States by the State of New Jersey of jurisdiction over the the same and the long continued use of that peninsula, and of the main sea to the eastward of it for military purposes, to be free in navigating the main sea to the eastward of that peninsula from the operation of any law of the State of New Jersey, giving a right of action for injuries causing death, and claims that the main sea to the eastward of said peninsula to a distance of three miles from the shore is subject to the exclusive jurisdiction of the United States. It, therefore, asks the court to direct the jury to return a verdict for the defendant on the ground that it appears by uncontradicted evidence that the collision between the SS. Alene and the schooner James Gordon Bennett, to recover damages for which this suit is brought, occurred upon the main sea and to the eastward of the Sandy Hook peninsula, and at a distance of more than a mile to the eastward of low water mark, upon the exterior line thereof."

The court denied the motion and defendant excepted. The jury found a general verdict for plaintiff below, and assessed the damages. Judgment was entered thereon, which was affirmed by the Appellate Division of the Supreme Court, and a writ of error from the Court of Appeals was denied. This writ of error was then allowed, and the case submitted on motions to dismiss or affirm.

Mr. Chief Justice FULLER delivered the opinion of the Court:

The assertion by plaintiff in error that Federal questions were decided by the action of the courts below turns on the denial of the motion to direct a verdict on the two grounds above set forth.

As to the first ground, the contention is that the act of Congress of June 28, 1834, (4 Stat. 708, ch. cxxvi,) giving consent to the agreement or compact between the States of New Jersey and New York in respect of their territorial limits and jurisdiction, dated September 16, 1833, vested exclusive jurisdiction in the Federal Government over the sea adjoining the two States. But there is absolutely nothing in the agreement and confirmatory statutes abdicating rights in favor of the United States, and the transaction simply amounted to fixing the boundaries between the two States. Laws New York, 1834, p. 8, c. 8; Laws New Jersey, 1834, p. 118. The first proposition raised no Federal question.

As to the second ground, the contention is that the cession by New Jersey to the United States of jurisdiction over a certain strip of land at Sandy Hook vested in the United States exclusive legislative jurisdiction over the littoral waters extending three miles to the eastward of the coast line thereof.

Yet there was evidence introduced on behalf of defendant that the collision took place outside of that limit. And the trial court was not re-

quested to instruct the jury that if they found the collision to have occurred within that limit the verdict should be for the defendant.

The charge of the court is not before us, nor was any exception taken to any part of it, and the verdict and judgment must be held to have been rendered on the facts according to law. *Hamburg-Am. S. S. Co.* v. *Lennan*, 194 U. S. 629.

This being the situation we hesitate to retain jurisdiction. Nevertheless, as clause 17 of section 8 of article I of the Constitution* may be regarded as having been properly invoked by the second proposition, we feel justified in declining to sustain the motion to dismiss. And retaining jurisdiction, we think the judgment must be affirmed.

The jurisdiction of the United States over Sandy Hook is derived from the act of the legislature of New Jersey of March 12, 1846, set forth below.† (Laws N. J. 1846, p. 146.) In 1806 and 1817 deeds of the land included in Sandy Hook were given the United States, being simple conveyances of real estate for named money consideration.

The New Jersey act of 1846 was merely one of cession, and the operation of the general laws of New Jersey was reserved as therein provided. *Fort Leavenworth R. R. Company* v. *Lowe*, 114 U. S. 525; *Chicago & Pacific Railway Company* v. *McGlinn*, Id. 542.

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* "The Congress shall have power . . . to exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may by cession of particular States, and the acceptance of Congress, become the seat of Government of the United States, and to exercise like authority over all places purchased by the consent of the legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards, and other needful buildings."

† 1. "That the jurisdiction in and over all that portion of Sandy Hook, in the county of Monmouth, owned by the United States, lying north of an east and west line through the mouth of Young's Creek at low water, and extending across the island or cape of Sandy Hook from shore to shore, and bounded on all other sides by the sea and Sandy Hook Bay, be, and the same is hereby, ceded to the said United States for military purposes; and the said United States shall retain such jurisdiction so long as the said tract shall be applied to the military or public purposes of said United States, and no longer."

2. "That the jurisdiction ceded in the first section of this act shall not prevent the execution on the said tract of land of any process, civil or criminal, under the authority of this State, except so far forth as such process may affect any of the real or personal property of the United States of America within the said tract; nor shall it prevent the operation of the public laws of this State within the bounds of the said tract, so far as the same may not be incompatible with the free use and enjoyment of the said premises by the United States for the purposes above specified."

Moreover, as was held by the Circuit Court of Appeals for the Second Circuit, in *Middleton* v. *La Compagnie Générale Transatlantique*, 100 Fed. Rep. 866, the act did not purport to transfer jurisdiction over the littoral waters beyond low-water mark, and for the purposes of this case the public laws of New Jersey must be regarded as obtaining there, whether enacted prior or subsequent to the cession.

*Judgment affirmed.*

True copy.

Test:

*Clerk Supreme Court, U. S.*